

Title 7 CABLE TELEVISION

Chapter 7.1 IN GENERAL

7.1.1 Community Cable Television System.

The municipal officers may contract on such terms and conditions as are in the best interests of the municipality, including the grant of an exclusive franchise for a period not to exceed ten (10) years, for the placing and maintenance of community cable television systems and appurtenances or parts thereof, along the public ways and including contracts with operators of such systems which receive the services of television signal transmission offered by any public utilities using public ways for such transmission.

7.1.2 Rate Regulations.

A. The purpose of this title is to implement the authority conferred on cable television franchising authorities to regulate basic service rates and charges.

B. This title is enacted pursuant to the Cable Television and Consumer Protection and Competition Act of 1992, as amended; pursuant to regulations adopted by the Federal Communications Commission ("FCC"), including but not limited to the "FCC Rate Regulations" as defined herein; and pursuant to 30-A M.R.S. §3001, as amended.

7.1.3 Definitions.

For the purposes of this title or the franchisee agreement, the following terms, phrases, words, abbreviations and their derivations have the meaning given herein, as set forth in this appendix, attached hereto as part of this title. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and vice versa. The word "shall" is always mandatory and not merely directory.

Access channel(s) means a video channel(s) which the franchisee makes available to the Town, without charge, for the purpose of transmitting programming by/for members of the public, Town departments, boards and agencies, public schools, educational, institutional, nonprofit and similar organizations.

Access programming means

(1) Public; non-commercial programming produced by the Town, or produced by any non-commercial operator authorized by the Town to provide public programming,

(2) Educational; non-commercial programming produced by the Town's public schools, or produced by any other non-commercial educational organization authorized by the Town to provide educational programming,

(3) Governmental; non-commercial programming produced by any Town department, agencies, boards, committees, or produced by any non-commercial governmental organization authorized by the Town to provide governmental programming. The aforementioned items are abbreviated as PEG (Public, Educational, and Governmental) access channel(s) PEG.

Alphanumeric means consisting of a combination of letters and numbers, used in reference to keyboards permitting communication in such form and in reference to channels or programs transmitting information in such form.

Basic service rates and charges means basic service tier rates and the charges for related equipment, installation and services which, pursuant to federal laws and regulations, may be regulated by franchising authorities.

Basic service tier means that tier of cable television service which contains, at a minimum, all local broadcast signals and the public, educational and governmental channels required by the franchise agreement. Provided that the contents of this tier meet this definition, the cable operator may, in its sole discretion, determine what (if any) additional service will be provided as part of this tier.

Additionally, basic service tier means a separately available or “unbundled” tier of cable service that must include:

- a. All signals of local commercial and non-commercial educational television and qualified low power stations carried to meet “must-carry” status under Sections 614 and 615 of the Cable Act and FCC rules;
- b. Any PEG access programming required by the franchise to be provided to subscribers;
- c. Any signal of any television broadcast station that is provided by the franchisee to any subscriber, except a signal which is secondarily transmitted by a satellite carrier beyond the local service area of such station; and
- d. Any additional video programming signals or services added to the basic tier by the franchisee.

Benchmark approach means that theory of rate regulation which sets rates based upon “benchmarks” established by the FCC.

Cable Act means the Cable Communications Policy and Communications Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, and as further amended.

Cable programming service means any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (1) video programming carried on the basic service tier, (2) video programming offered on a pay-per-channel or pay-per-program basis, or (3) a combination of multiple channels of pay-per-channel or pay-per-program video programming offered on a multiplexed or time-shifted basis so long as the combined service: (a) consists of commonly-identified video programming; and (b) is not bundled with any regulated tier of service.

Cost-of-service approach means that theory of rate regulation, to be initiated only by the cable operator, which allows the cable operator to charge rates in excess of the FCC benchmark rates upon a showing that the cost of providing cable service exceeds the benchmark rate.

FCC Rate Regulations means Report and Order, In the Matter of Implementation of Sections of Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket 92-266, FCC 93-177 (released May 3, 1993), as amended.

Franchising authority means the Town of Kittery, acting through its municipal officers pursuant to its authority under federal, state and local laws and regulations to authorize and oversee the provision of cable television service in Kittery.

Franchisee means any person or persons owning, controlling, operating, managing or leasing a cable system within the Town, pursuant to this title, and pursuant to any franchise granted to it by the Town. This term includes any lawful successor(s) to the interest of such person or persons where consent to such successor(s) is approved under the provisions of this title and under any applicable terms of a franchise agreement entered into pursuant to this title.

Franchisee fee means a fee that may be imposed by the franchisor on the franchisee as compensation for the rights provided to the franchisee under a franchise, including the rights to use the streets and public ways of the franchisor to operation and maintain the franchisee's cable system.

Franchise and/or franchise agreement means the non-exclusive right, privilege and authorization granted in accordance with this title to construct, operate and maintain a cable system, and appurtenances or parts thereof, in the streets, roads, alleys, and other public ways of the Town.

Any such authorization, in whatever form granted, does not mean or include any license or permit required for the privilege of transacting and carrying on a business within the Town as required by the ordinances and laws of the Town, or for attaching devices to poles or other structures, whether owned by the Town or a private entity, or for excavating or performing other work in or along street or public ways. A franchise agreement further defines the rights and responsibilities of each party in the operation of the cable system within the geographical area of the Town.

PEG means the acronym for Public, Educational, and Governmental access channels. Any channel(s) made available for the presentation of programming originated by the Town, or its authorized representative(s).

Program means any audible, visual or facsimile signal, message, graphics, data or communication of any kind transmitted on the cable system whether analog or digital.

Programming and/or video programming means programming provided by, or generally considered comparable to programming provided by a television broadcast station.

Public buildings and grounds means all public schools, parks, police and fire stations, public libraries, recreation facilities, and any other buildings owned or leased by the Town.

Service tier means a category of cable service or other services provided by the franchisee and for which a separate rate is charged by the franchisee.

Video programming means programming provided by, or generally considered comparable to programming provided by, a television broadcast station, superstations, satellite-delivered cable networks and pay cable, whether the subscriber fee is on a per-channel or per-program basis.

Worksheets means FCC approved worksheets accompanying a rate filing to the franchise authority. Worksheets are used to calculate a franchisee base rate per channel. The base rate per channel must not exceed the adjusted benchmark channel rate.

7.1.4 Rate Setting Procedures.

A. Cable Operator Submission. Within thirty (30) days of the date of a notice from the franchising authority to the cable operator, the cable operator must file its rate justification with the franchising authority.

B. Franchising Authority Response. The franchising authority must make a decision on the rate request within thirty (30) days after the cable operator submits its rate justification. The rates proposed by the cable operator automatically take effect after that thirty (30) day period unless the franchising authority issues a statement that it needs additional time to make its decision.

If the franchising authority decides that it needs longer than the initial thirty (30) day period to consider the rate request, it may issue a statement to that effect. Such statement may provide for up to ninety (90) additional days to review a rate request based upon a benchmark approach and up to one hundred fifty (150) days to review a rate request based upon a cost of service approach.

If the franchising authority cannot reach a decision by the end of the extended period set forth in the preceding paragraph, the rates proposed by the cable operator go into effect, subject to refund. If the franchising authority intends to seek refunds, it must issue an order to the cable operator prior to expiration of the time period for response, notifying the cable operator to keep accurate records with respect to rates.

C. Public Hearing Required. A public hearing is to be held in connection with every rate setting proceeding. At least ten (10) days prior to the hearing date, the Town clerk must publish a notice of the hearing in a newspaper of general circulation in the Town. The notice must identify the name of the cable operator, indicate that a rate change has been requested, and identify the time and place of the public hearing.

D. Proprietary Information. The franchising authority may require the cable operator to furnish proprietary information in connection with any rate setting proceeding.

E. Calculation of Rates and Refunds. In setting basic tier rates and charges, and in setting any refunds, the franchising authority is governed by the FCC Rate Regulations as amended. The

FCC Rate Regulations govern notwithstanding any different or inconsistent provisions in the franchise agreement.

F. Decision of Franchising Authority. The franchising authority must issue a written rate decision with appropriate findings and conclusions if the franchising authority:

1. Disapproves, in whole or in part, the initial rate scheduled or a proposed rate increase; or
2. Approves the initial rate or proposed rate increase over the objection of an interested party.

Notice to the public must be posted in the Town Hall and local Post Offices of any such written decision, which must include release of the text of the written decision to the public. No written decision is required to approve an unopposed existing or proposed rate.

G. Appeals. The FCC has exclusive jurisdiction to hear appeals challenging whether the franchising authority's decision is consistent with the 1992 Cable Act or any applicable FCC rules. Any participant in a franchising authority's rate regulation proceeding may appeal the franchising authority's decision on such grounds to the FCC within thirty (30) days of release of the public notice required under subsection F of this section.

Appeals on grounds other than those stated in the preceding paragraph may be made to Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

7.1.5 Execution of Documents—Authority Conferred.

The Town Manager is authorized to execute on behalf of the Town and file with the FCC such certifications, forms or other instruments as are now or may hereafter be required by the FCC Rate Regulations in order to enable the Town to regulate basic service rates and charges

Chapter 7.2 CABLE TELEVISION FRANCHISE

7.2.1 Policy and Purpose—Franchise Agreement Requirement.

A. . It is the policy of the state of Maine and the Town, with respect to cable television:

1. To affirm the importance of municipal control of franchising and regulation in order to ensure that the needs and interest of local citizens are adequately met;
2. That the Town, when acting to displace competition with regulation in the area of cable television, proceed according to the judgment of the municipal officers as to the type and degree of regulatory activity considered to be in the best interest of its citizens;
3. To provide adequate statutory and ordinance authority to the Town to make franchising and regulatory decisions to implement this policy and to avoid the cost and uncertainty of lawsuits challenging that authority; and
4. That the Town's municipal officers must enact an ordinance governing cable franchising and regulation of cable television systems using public ways before granting any franchise(s).

B. Public Hearing. Any public hearing, pertaining to activities of the franchisee and the Town, and unless otherwise provided in this title, must be held on seven days written and publicly

advertised notice, at which time the franchisee and the public are to be given an opportunity to be heard.

C. General Authority. No person, firm or corporation may construct, install, maintain or operate within the Town a cable system unless a franchise agreement has first been obtained pursuant to the provisions of this title and unless said franchise agreement is in full force and effect. The provisions of this title and any franchise agreement executed in accordance with this title is to be liberally construed in favor of the Town and its cable subscribers in order to effectuate their purposes and objectives and to promote the public interest. Any franchise agreement is governed by and construed in accordance with the laws of the state of Maine, federal regulations and laws, and ordinances of the Town.

D. Grant of Renewal Franchise. Pursuant to the authority of 30-A, M.R.S. §3001 thru §3010, and subject to the terms and conditions set forth herein, and the franchise agreement, the Town Council, in its statutory role as the issuing authority of the Town, may grant a non-exclusive, revocable cable television agreement to any cable operator or its successors for the purposes of constructing, installing, upgrading, operating, and maintaining a cable system within the Town.

7.2.2 Franchise Agreement.

7.2.2.1 Rights to Contract.

The Town Council may approve a contract on such terms, conditions, and fees as are in the best interest of the Town and its residents with one or more cable operators for the operation of a cable system within the Town, including the granting of non-exclusive franchise agreement(s) for the construction, installation, upgrading, maintenance and operation thereof.

7.2.2.2 Public Inspection.

The franchise agreement application(s), including renewal applications, and any submittals in response to a request for proposals or solicitation of bids and related documents, are public records. Upon the filing of such documents, the Town must provide reasonable notice to the public that such documents are open to public inspection during reasonable business hours.

7.2.2.3 Conditions.

Any franchise agreement between the Town and the cable operator is to be substantively based on the Maine Model Agreement, dated October 30, 2009, or any successor model/revision.

7.2.3 Town's Retained Rights and Authority.

7.2.3.1 Right to Grant Additional Franchises.

A franchise agreement is non-exclusive and will not explicitly or implicitly preclude the issuance of other franchises to operate cable systems within the Town. The Town expressly reserves the right to grant other such franchise agreements in the Town on such terms as it deems appropriate and to operate a Town-owned cable system. No privilege or power of eminent domain is bestowed upon the franchisee by the granting of a franchise.

7.2.3.2 Exercise of Police and Regulatory Power.

All rights and privileges granted in any franchise agreement are subject to the police power of the Town to adopt and enforce local laws, ordinances, bylaws, rules and regulations necessary to the health, safety and general welfare of the public. Expressly reserved to the Town is the right to adopt, in addition to the provisions of any franchise agreement, this title and any other existing laws, ordinances and regulations (collectively “laws”), such additional laws as it may find necessary in the exercise of its police power. Any conflict between the terms of any franchise agreement and any present or future exercise of the Town’s police and regulatory powers must be resolved in favor of the Town’s police and regulatory powers.

7.2.3.3 Use of Public Ways.

The right to use and occupy the street and public ways and public places granted in any franchise agreement is not exclusive, and the Town reserves the right to grant similar or other uses of the said streets, public ways and public places to any person at any time during the term of any franchise agreement.

7.2.3.4 Conflict with Public Works.

The rights and privileges granted to the franchisee in any franchise agreement must not be in preference or hindrance to the right of the Town or any other governmental agency, improvement district or other authority having jurisdiction, to perform or carry on any public works or public improvement. Should the franchisee's cable system in any way interfere with the construction, maintenance or repair of such public works or improvements, the franchisee must, at its own expense, protect or relocate its cable system or part thereof, as directed by the Town or other authority having jurisdiction.

7.2.3.5 Removal and Relocation.

The Town has the power at any time to order and require the franchisee to remove or relocate any pole, wire, cable or other structure machinery or equipment located within a public way that is dangerous to life or property. In the event that the franchisee, after notice, fails or refuses to act within a reasonable time, the Town has the power to remove or relocate the same at the sole cost and expense of the franchisee.

7.2.3.6 Acts at Grantee's Expense.

Any act that the franchisee is or may be required to perform under this title, a franchise agreement, or applicable laws is performed at the franchisee's expense, unless expressly provided to the contrary in this title, the franchise agreement, or applicable laws.

7.2.4 Non-Waiver.

Neither the provisions of this section, nor any bonds accepted by the Town pursuant hereto, nor any damage recovered by the Town there under, may be construed to excuse unfaithful performance by the franchisee or limit the liability of the franchisee under this title or the franchise agreement for damages, either to the full amount of the bond or otherwise.

Chapter 7.3 CABLE TELEVISION FRANCHISE REQUIREMENTS

7.3.1 Application.

Any application for a new cable television franchise or renewal of a franchise in the Town is to contain the following information:

1. The name, addresses, and telephone numbers of the applicant, both the regional and national;
2. A detailed statement of the corporate or other business entity organization of the applicant, including, but not limited to, the following and to whatever extent required by the Town:
 - a. The names, residence and business addresses of all officers and directors;
 - b. The names, residence and business addresses of all officers, persons and entities having, controlling, or being entitled to have or control one percent or more of the ownership of the applicant;
 - c. A detailed and complete financial statement of the applicant, and its subsidiaries, prepared by a certified public accountant, for the fiscal year next preceding the date of the application hereunder and certifying that the applicant has available sufficient free, net and uncommitted cash resources to operate the proposed cable system in the Town.

3. A detailed description of the proposed plan of operation of the applicant that includes, but not be limited to, the following:

a. A statement or schedule setting forth all proposed classifications of rates and charges to be made against all subscribers, including but not limited to residential dwellings, commercial establishments, apartments, housing projects (both public and private), hotels, motels, and other establishments. Additionally, all rates and charges as to each of said classifications, including installation charges, service charges, deposit agreement (if any) and all other rates and charges to be made;

b. A detailed, informative, and referenced statement describing the actual equipment and operational standards proposed by the applicant. In no event are said operational and performance standards to be less than those contained in Title 47 C.F.R. Subpart K (Sections 76.601, et seq.), of the Rules and Regulations of the FCC, as amended in the future, and in addition comply herein.

4. A detailed statement setting forth in its entirety the imposed cable system design. Such statement is to include proposals concerning system architecture, channel capacity, channel uses, access, programming facilities, franchisee studio location, point to point service, two-way capability, subscriber privacy, and interconnection.

5. Such other information as may be required by the Town for a new or renewal franchise

7.3.2 Contract term, Termination and Renewal.

7.3.2.1 Term.

Each franchise must contain the following provisions:

1. Any franchise awarded by the Town under this title is to be for a term of not less than five years nor more than ten (10) years. The franchisee has no automatic right to renewal of a franchise, but any renewal is in the sole discretion of the Town acting in accordance with any applicable provisions of Maine and federal law;

2. Any renewal of a franchise is to be upon such terms and conditions as herein stated, and the franchisee has satisfied the conditions of this title, and provided the franchisee has fulfilled all terms and conditions of any previous contract. Prior to any renewal or extension of the franchise, franchisee must satisfy the Town Council at a public hearing that it has maintained or will improve the cable system to remain abreast of all highest standards of broadcast, repair and service restoration, programming, rates, customer service, billing and quality;

3. Notwithstanding any other provision of this title or any franchise agreement, the Town may from time to time extend the franchise agreement by resolution for a period not to exceed six months.

7.3.2.2 Termination.

The Town may revoke or terminate any franchise awarded pursuant to the provisions of this title or may impose reasonable penalties upon thirty (30) days written notice to the franchisee, and after public hearing in the event that the franchisee:

1. Violates any material provision of its franchise agreement or any rule, order or determination of the Town made pursuant to the franchise agreement or this title where such violation remains uncured for a period of thirty (30) days following notice to the franchisee by the Town that such violation is deemed to exist;
2. Attempts to evade any material provision of its franchise agreement or practices any fraud or deceit upon the Town or subscribers residing in the Town;
3. Accumulates, within any period of six consecutive months, penalties imposed under this title or a franchise agreement, in the aggregate amount of ten thousand dollars (\$10,000) for failure to perform any of its other obligations;
4. Has a petition under the Bankruptcy Code filed by or against it, and the franchisee fails to have the petition dismissed within sixty (60) days;
5. Has a receiver, trustee or liquidator appointed for all or part of the franchisee's assets;
6. Becomes financially insolvent or makes an assignment for the benefit of creditors;
7. Continuously or repeatedly violates any provisions of its franchise agreement or any orders or rulings of any regulatory body having jurisdiction over the franchisee; or
8. Fails to perform in accordance with the terms of the franchise agreement.

7.3.2.3 Revocation Public Hearing.

Prior to revoking a franchise, the Town must hold a public hearing, on thirty (30) days written notice, at which time the franchisee and the public are to be given an opportunity to be heard. Following the public hearing, the Town may determine to revoke the franchise based on the information presented at the hearing and other information of record. If the Town determines to revoke a franchise, it must issue a written decision setting forth the reasons for its decision. A copy of such decision must be transmitted to the franchisee. Any appeal or challenge to a revocation or termination of a franchise agreement is to the York County Superior Court pursuant to Rule 80B of the Maine Rules of Civil Procedure.

7.3.2.4 New Franchise and/or Renewal Public Hearing.

Before authorizing the issuance of any new franchise and/or renewal, the Town must review the applicant's character, financial and technical qualifications, the proposed agreement's ability to meet current and future cable-related needs and interests, and the adequacy and feasibility of the applicant's qualifications to operate a cable system within the Town, and the Town Council must conduct a public hearing.